IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FA/114/2006

National Insurance Company Ltd. ... Appellant

vs.

Shri Kishore Vinayak Patil and ors. ... Respondents

Mr. S. M. Vidyarthi for appellant
Mr. S. A. Joshi for respondents

CORAM: D. G. KARNIK **J.**

DATE: 8th November 2006

P.C.:

1. Heard learned counsel for the appellant and respondent nos. 2 to 5.
2. This first appeal is directed against the judgment and order dated 16th September 2005 passed by the Member of the Motor Accidents Claims Tribunal awarding the compensation of Rs.3,95,000/- to the respondent nos. 1 to 5 on account of the death of Chandabai the wife of respondent no.1.
3. Respondent no.1 has died. His heirs have not been brought on record. The appeal against respondent no.1 has abated.
4. Respondent no.6 is the owner of the motor vehicle. As no steps were taken for service of the notice on the respondent no.6 the appeal against respondent no.6 has been dismissed under Order 9 Rule 5 of Civil Procedure Code.

5. Respondent no. 6 is the owner of the vehicle. A decree has been passed against respondent no.6 who is the owner. The appellant is only an Insurance Company which is only required to indemnify the respondent no.6 against whom the decree has been passed. Hence, in my view, the respondent no.6 is a necessary party to the appeal.

6. A joint and several decree was passed in favour of the respondent nos. 1 to 5. The decree has become final so far as respondent no.1 is concerned. As the decree has become final against one of the respondents and as the appeal has abated against respondent no.1 and dismissed against respondent no.6 in my view the entire appeal stands abated. In any event if the appeal is allowed against respondent nos. 2 to 5 it will result in two inconsistent decrees one in favour of respondent no.1 which has become final and another qua the respondent nos. 2 to 5 which is not permissible. Accordingly the entire appeal fails. The appeal is accordingly dismissed.

(D.G. KARNIK J.)

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Civil application no. 187 of 2006
in
FA/114/2006

National Insurance Company Ltd. ... Appellant
vs.
Shri Kishore Vinayak Patil and ors. ... Respondents

Mr. S. M. Vidyarthi for appellant
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In view of the dismissal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)